

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Requests for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Beginning with Children Charter School	)	File No. SLD-256153
Brooklyn, New York	)	
	)	
Yeshiva Karlin-Stolin	)	File No. SLD-265665
Brooklyn, New York	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21✓
National Exchange Carrier Association, Inc	)	

**ORDER**

**Adopted: January 29, 2003**

**Released: January 30, 2003**

By the Wireline Competition Bureau:

1. The Wireline Competition Bureau has under consideration Requests for Review filed by the Beginning with Children Charter School (BWC), Brooklyn, New York and Yeshiva Karlin-Stolin (Yeshiva), Brooklyn, New York (collectively, the Applicants).<sup>1</sup> The Applicants request review of decisions by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).<sup>2</sup> In each case, SLD denied Funding Year 2001 requests for discounted services under the schools and libraries universal service support mechanism because the applicant failed to demonstrate an ability to pay its share of the costs of

<sup>1</sup> Letter from Brian Jendryka, Beginning with Children Charter School, to Federal Communications Commission, filed May 14, 2002 and Letter from Abraham Shor, Yeshiva Karlin-Stolin, to Federal Communications Commission, filed March 25, 2002 (Requests for Review).

<sup>2</sup> *Id.* Previously, Funding Year 2001 was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period that began on July 1, 1999 and ended on June 30, 2000, previously known as Funding Year 2, is now called Funding Year 1999. The funding period that began on July 1, 2000 and ended on June 30, 2001 is now known as Funding Year 2000, and so on.

the services.<sup>3</sup> For the reasons set forth below, we remand the applications to SLD for further action consistent with this Order.

## A. BACKGROUND

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>4</sup> The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470,<sup>5</sup> which is posted to the Administrator's website for all potential competing service providers to review.<sup>6</sup> After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.<sup>7</sup> SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. Item 25 of the FCC Form 471 requires applicants to certify that they had secured access "to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services."<sup>8</sup> In the *United Talmudical Academy Order*, the Commission affirmed SLD's practice of reviewing the accuracy of applicants' certifications regarding necessary resources, concluding that by so doing, SLD ensures compliance with statutory requirements and Commission rules and curbs waste, fraud, and abuse in the schools and libraries universal service mechanism.<sup>9</sup> The Commission also concluded that it is

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<sup>3</sup> *Id.*; see Letter from Schools and Libraries Division, Universal Service Administrative Company, to Brian Jendryka, P S 333 Beginning with Children, dated March 15, 2002 (BWC FCDL); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Abraham Shor, Yeshiva Karlin-Stolin, dated January 25, 2002 (Yeshiva FCDL).

<sup>4</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>5</sup> Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

<sup>6</sup> 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

<sup>7</sup> 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471)

<sup>8</sup> See FCC Form 471 at Item 25.

<sup>9</sup> *Request for Review of the Decision of the Universal Service Administrator by United Talmudical Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange*

appropriate for SLD to analyze solely whether an applicant has demonstrated that it has the necessary resources to support its application as a whole, not whether the resources are sufficient to satisfy individual requests, because it would be administratively burdensome for SLD to determine which resources should be assigned to which request.” The sole exception to this rule is where an applicant has requested “basic voice telephone service” on a stand-alone basis and not bundled with other products or services in a funding request.” For such requests, the Commission directed SLD to engage in a separate necessary resources review.<sup>12</sup> As a result, where an applicant fails to demonstrate that it has the necessary funds to pay its share of service costs, all Funding Request Numbers (FRNs) other than those seeking basic voice telephone service will be denied, even if the applicant has demonstrated that it has funds sufficient to pay for some of its FRNs.

4. **Beginning with Children Charter School.** On January 18, 2001, BWC filed an FCC Form 471 seeking Funding Year 2001 discounts.<sup>13</sup> During application review, SLD contacted BWC and requested documentation demonstrating, among other things, that BWC had the ability to pay for its share of the service costs, which SLD calculated as \$62,130.50.<sup>14</sup> BWC responded with documentation including a budget that included a line item for E-rate funding of \$63,000.<sup>15</sup> On March 15, 2001, SLD issued a Funding Commitment Decision Letter denying all funding requests, stating that “[y]ou did not demonstrate that you had secured access to the funds necessary to pay the non-discount charges at the time you submitted your application.”<sup>16</sup>

5. **Yeshiva Karlin Stolin.** Yeshiva filed a Funding Year 2001 application on January 17, 2001.<sup>17</sup> On June 14, 2001, SLD faxed a request for additional documentation, requesting, among other things, “[d]ocumentation of your ability to pay the applicant share of E-

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*Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, 15 FCC Rcd 423 (2000) (*United Talmudical Academy Order*).

<sup>10</sup> *Request for Review by United Talmudical Academy, Federal-State Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No, SLD-105791, CC Dockets No. 96-45 and 97-21, 15 FCC Rcd 423, paras. 15-16 (2000) (*United Talmudical Academy Order*).

<sup>11</sup> *Id.* at para. 19

<sup>12</sup> *Id.*

<sup>13</sup> FCC Form 471, P S 333 *Beginning with Children*, filed January 18, 2001 (BWC Form 471).

<sup>14</sup> Facsimile from Steve Casavani, School and Libraries Division, Universal Service Administrative Company, to Brian Jendryka, *Beginning with Children Charter School*, dated April 16, 2001 (SLD Request), at 1-2.

<sup>15</sup> Letter from Brian Jendryka, *Beginning with Children Charter School*, to Steve Casavani, School and Libraries Division, Universal Service Administrative Company, filed April 17, 2001, attachment (Budget). Because the record does not otherwise demonstrate the date on which this documentation was faxed to SLD, we accept the date asserted in the Request for Review. *See* Request for Review at 1.

<sup>16</sup> BWC FCDL at 6-7.

<sup>17</sup> FCC Form 471, *Yeshiva Karlin-Stolin*, filed January 17, 2001 (Yeshiva Form 471)

Rate.”” SLD stated that the total applicant share for Yeshiva’s FCC Form 471 was \$18,175.36.<sup>19</sup> On June 28, 2001, Yeshiva responded in a faxed letter: “[W]e cannot fax our budget for the July 2001 though June 2002 period as it is pending. We plan on having the \$18,175.36 which will cover our share of the E-Rate initiative. We have included a letter from our administrator, . . . clarifying that the \$18,175.36 for technology is included in the tentative budget.”” The accompanying letter stated: “This is to verify that \$18,175.36 will be included in our operating budget to satisfy our share of the Year 4 E-rate initiatives.”<sup>21</sup>

6. After a follow-up request from SLD, Yeshiva also provided an Income and Expense Budget for Fiscal Year July 1, 2001 to June 30, 2002 in which a line item designated “Telecommunications Services” in the amount of \$18,000 was marked as being used to pay for the applicant’s Funding Year 2001 share of costs.<sup>22</sup> On February 8, 2002, SLD denied all funding requests for non-basic telecommunications on the grounds that Yeshiva had not demonstrated that it had secured access to the funds necessary to pay the non-discount charges at the time it submitted its application.<sup>23</sup>

## B. DISCUSSION

7. We have reviewed the record of the two Requests for Review. We find that the Applicants’ submitted budgets did not demonstrate that they had the ability to pay the full amount of their share of the costs. We conclude, however, that both applications should be remanded to SLD to allow the Applicants an opportunity to cure the problems with their originally submitted budgets. BWC’s showing in its application did not adequately demonstrate compliance with the Commission’s necessary resources requirements.

8. We find that BWC’s showing in its application did not adequately demonstrate compliance with the Commission’s rules. The budget did include a line-item indicating that \$63,000 has been set aside for E-rate, which was sufficient to cover the \$62,130.50 BWC would have to pay as its share of service costs.<sup>24</sup> Under the revenues section, however, the budget also indicates that \$941,372 of the total \$4,535,480 of revenues for the budget were “[f]unds to be raised,” indicating that these were not funds that BWC had secured.” Thus, BWC’s budget did

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<sup>18</sup> Facsimile from Schools and Libraries Division, Universal Service Administrative Company, to Abraham Shor, Yeshiva Karlin-Stolin, dated June 14, 2001 (Document Request), at 2.

<sup>19</sup> *Id.* at 2

<sup>20</sup> Facsimile from Yeshiva Karlin-Stolin, to Schools and Libraries Division, Selective Review Team, filed June 28, 2001 (Yeshiva Response).

<sup>21</sup> *Id.*, attachment

<sup>22</sup> Facsimile from Abraham Shor, Yeshiva Karlin-Stolin, to Schools and Libraries Division, Universal Service Administrative Company, filed November 28, 2001, attachment.

<sup>23</sup> Yeshiva FCDL at 6

<sup>24</sup> *See* Budget

<sup>25</sup> *Id.*

not demonstrate that it had actually secured, at the time it submitted its application, all the funds necessary to pay for its share of service costs. In Yeshiva's case, the amount of Yeshiva's share was \$18,175.36, and its budget only provided \$18,000 to cover that amount. We therefore agree with SLD's determination that the budgets provided by the Applicants, as part of their applications, did not demonstrate ability to pay.

9. Under its normal operating procedures, however, when SLD identifies such problems with the budget or other initial documentation proffered by an applicant to demonstrate ability to pay, it generally contacts the applicant and provides an opportunity to remedy the difficulty. For example, in instances where the budget or other documentation initially submitted does not demonstrate that sufficient funds have been secured to pay for all the services, an applicant is given an opportunity to submit further documentation on this issue. Alternatively, if the budget demonstrates sufficient funds but also reveals an overall budget deficit, an applicant is permitted to demonstrate how additional revenues will be obtained to cover the deficit or to stipulate to other expenses that will be eliminated. Finally, if an applicant can demonstrate that it had a good faith, reasonable basis at the time the application was filed for stating that it had secured the necessary funds but that events subsequent to the filing, such as unanticipated budget cuts, have now rendered it unable to pay for all of its FRNs, SLD provides the applicant with the opportunity to select a subset of its FRNs that its current funds can cover.

10. In BWC's case, only a portion of its overall budget relied on revenues to be raised and it had in fact raised revenues in excess of the amount to be used to fund costs associated with the schools and libraries program. In Yeshiva's case, the budget discrepancy was minimal (only \$175.36). Given these circumstances, we think it is appropriate for SLD to provide each applicant an opportunity to provide additional documentation to demonstrate compliance with the Commission's rules.

11. We emphasize that SLD should continue to require appropriate proof of an applicant's assertions, in order to guard against waste and fraud. We also wish to emphasize that the ultimate burden of proof remains on the applicant. We do not require SLD to repeatedly contact applicants for new or clarifying information. Where an applicant has submitted a budget that does not adequately demonstrate ability to pay, however, we believe that providing an applicant an opportunity to address the problem will provide a better balance between the need for administrative efficiency and the interests of eligible schools and libraries in receiving discounts. We leave to SLD's reasonable discretion whether further contacts should be made, considering such factors as whether the remaining problem is relatively simple or involves a small amount, the attempts made by SLD to resolve it previously, and the responses to previous inquiries.

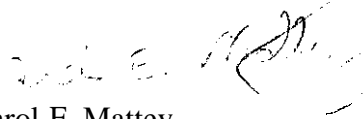
12. In light of these conclusions, we remand the pending applications to SLD so that it may provide each applicant in the instant Request for Review an opportunity to address the problems with the applicant's budget in a manner consistent with the procedures described above. Thus, on remand, BWC should be permitted an opportunity to address the apparently unsecured funds in its budget by such means as demonstrating that the anticipated funds have been secured, providing alternate, secured sources for the funds are available, or demonstrating that it is cutting expenses in the budget unconnected to its discounted service obligations to cover

the shortfall. Similarly, Yeshiva should be permitted to demonstrate that it can cover the entire \$18,175.36 amount of its share of the costs, including the \$175.36 amount not covered in its original budget.

13. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by the Beginning with Children Charter School, Brooklyn, New York, on May 14, 2002 IS GRANTED, and its application is REMANDED to SLD for further consideration.

14. IT IS FURTHER ORDERED that the Request for Review filed by Yeshiva Karlin-Stolin, Brooklyn, New York, on March 25, 2002 IS GRANTED, and its application is REMANDED to SLD for further consideration.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey  
Deputy Chief, Wireline Competition Bureau